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MEMORANDUM OF LAW

DATE: November 30, 2020

TO: Elizabeth Maland, City Clerk
George Biagi, Deputy Director, Legislative Services

FROM: City Attorney

SUBJECT: Publication Requirements for Ordinances and Resolutions under San Diego Charter Section 18

INTRODUCTION

This Memorandum responds to your office's request for legal guidance on what constitutes an ordinance or resolution "of a general nature," under San Diego Charter (Charter) section 18, titled "Authentication and Publication of Ordinances and Resolutions." This Charter section covers publication of specified information about ordinances and resolutions "of a general nature" *after* they are adopted by the City Council (Council). There are separate legal requirements, established by state law, the Charter, and Council action, covering publication of certain information *before* the Council acts on matters, which we do not address here.¹

The City Clerk provided historical information on publication under Charter section 18, in a document, attached to San Diego Ordinance O-10028 (April 25, 1969). It states, in part:

Prior to April 14, 1966, all ordinances were published; from and after this date, only certain types of ordinances were printed.

Although no list or City Attorney's Opinion can be found citing exactly what types of ordinances were considered to be of a general nature, there is a letter from City Clerk Lockwood, dated April 25, 1969, that lists the following ordinances (all of which are published once):

¹ For example, the Charter section 18 publication requirement is distinct from the noticing requirements in the Ralph M. Brown Act, set forth at California Government Code sections 54950 through 54963, which include the requirement to post the Council's agenda with a brief general description of each item of business to be transacted or discussed at each Council meeting, including a closed session meeting, at least 72 hours before the meeting. Cal. Gov't Code § 54954.2. This Memorandum also does not address the noticing requirements related to specific legislative or quasi-judicial matters. This Office is available to provide guidance on these matters, if requested.

Annual Appropriation - Budget (Also Amending Ordinances)
Annual Compensation - Salary (Also Amending Ordinances)
Tax Rate
Land Dedicating for Parks
Franchises - Award
Council Districts - Establishing or Changing
Municipal Code - Amending, Adding, Repealing
Rezoning and Interim Zoning - When an Extremely Large
Area is Involved
Repealing Ordinances or Sections of the Municipal Code
(When the Repealed Ordinance had been Published.)
Approving Annexations - Inhabited and Uninhabited Territory
Bonds of General Obligation - Issuance

San Diego Ordinance O-10028 (Apr. 25, 1969).

In addition, the City Clerk has an office procedure, dated November 1997, that reflects the historical information. However, there remains some ambiguity about the publication requirements, and you have requested clarification.

QUESTIONS PRESENTED

1. What is an ordinance or resolution “of a general nature,” which is covered by the publication requirements of Charter section 18?
2. What does it mean to “publish” the title, number, and digest of an ordinance or resolution “of a general nature,” in accordance with Charter section 18?

SHORT ANSWERS

1. Charter section 18 requires that “the title and number of each ordinance or resolution of a general nature, together with a digest” be published at least once, within fifteen days of final passage, in the manner provided by the Charter or by ordinance of the Council. The Charter does not expressly define the phrase “of a general nature” even though the phrase is also used in Charter section 20, titled “Codification of Ordinances.” This section authorizes the Council to codify “all of the ordinances of a general nature of the City into a Municipal Code,” which the Council has done.² Reading Charter sections 18 and 20 together, any ordinance adding to, amending, or repealing provisions of the San Diego Municipal Code (Municipal Code or SDMC) is an ordinance “of a general nature,” requiring publication of its title, number, and digest after its passage.³ Although we may look to California law for guidance on whether

² This section states that when ordinances are codified, “such Municipal Code and all sections thereof shall be admissible in all courts as prima facie evidence of the due passage and publication of the ordinances as codified.” San Diego Charter § 20.

³ The Municipal Code “consists of administrative, criminal and regulatory ordinances of this City.” SDMC § 11.0101.

information about non-codified ordinances and resolutions must be published, we recommend that the Council, by ordinance, expressly define the publication requirement and provide specific direction to the City Clerk, consistent with the Charter.

2. Charter section 18 does not specify what is meant by “publication.” The Council, by ordinance, has provided that ordinances and resolutions “of a general nature” must be published once in the “City Official Newspaper,” as defined by Charter section 113. SDMC § 22.0102. Since Charter section 113 was recently repealed, we recommend that the Council amend Municipal Code section 22.0102 to clarify where the information about ordinances and resolutions “of a general nature” must be published.

DISCUSSION

I. CHARTER SECTION 18 REQUIRES PUBLICATION OF ORDINANCES AND RESOLUTIONS “OF A GENERAL NATURE.”

Charter section 18 covers publication of specified information about ordinances and resolutions after their enactment. It states, in pertinent part:

Within fifteen days after final passage the title and number of each ordinance or resolution of a general nature, together with a digest thereof prepared by the City Attorney, shall be published at least once in such manner as may be provided by this Charter or by ordinance. The publication shall be accompanied by the notice that the full text of the ordinance or resolution is available for perusal in the office of the City Clerk.

City voters approved the current language of Charter section 18 at the November 7, 1978 election. Although the section does not define “digest,” the ballot materials in 1978 described “digest” as a “brief synopsis.” Voter Pamph., Prop. H, Special Municipal Elec. (Nov. 7, 1978) at 2.⁴ The section also does not provide details on “publication,” such as where the title, number, and brief summary of ordinances and resolutions “of a general nature” must be published.⁵

⁴ See <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/pdf/pamphlet781107.pdf>

⁵ The argument in favor of Proposition H, in the November 7, 1978 election materials, explained the publication requirements, as follows:

The City Charter presently requires that ordinances and resolutions of general interest be published in full following their adoption by the City Council. The City publishes these ordinances and resolutions in the San Diego Daily Transcript. [¶] . . . The proposed change in the City Charter will allow the City to publish the title, number, and a digest of an ordinance or resolution and reduce publication costs by as much as 97%. Copies of all ordinances and resolutions will still be available to the public from the office of the City Clerk.

Voter Pamph., Prop. H, Special Municipal Elec. (Nov. 7, 1978) at 2.

In accordance with Charter section 18, the Council has adopted an ordinance, codified at Municipal Code section 22.0102, that directs the City Clerk to “cause” the publication of ordinances and resolutions “of a general nature . . . once in the ‘City Official Newspaper’” as defined by section 113 of the Charter. SDMC § 22.0102. However, Charter section 113 was repealed by City voters on November 8, 2016, as part of a Charter amendment relating to the City’s contracting activities. *See Voter Pamph., Meas. H, Pres. Gen. Elec. (Nov. 8, 2016)*, at p. N SD 480-082.⁶

Municipal Code section 22.0102 also provides that “when any ordinance or resolution is, by the City Charter, or by any general law, the provisions of which have been adopted by the City Charter, required to be published more than once, the City Clerk shall cause such ordinance or resolution to be published in the manner and as often as is so required.” SDMC § 22.0102. However, the “manner” of publication is not further defined. Charter section 20 also uses the phrase “of a general nature,” but does not define it.

The Council may clarify the publication requirements set forth at Charter section 18 by relying on information provided by general law and amending Municipal Code section 22.0102 to provide direction to the City Clerk on what is meant by “of a general nature.”

II. THE PUBLICATION REQUIREMENTS GIVE THE PUBLIC NOTICE OF THE COUNCIL’S LEGISLATIVE ACTIONS.

Courts have explained that one purpose of publishing a legislative enactment is to provide notice to citizens, as may be required to satisfy due process. *Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982) (stating that to provide constitutionally adequate notice of a change in the law “a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply”). *See also Reilly v. Superior Court*, 57 Cal. 4th 641, 649 (2013) (notice of a law’s requirements allows citizens to conform their conduct accordingly). Publication is a means “to advise those interested that the matter is up for consideration, or to inform them with reference to any ordinance that has been adopted so that they may regulate their actions and conduct accordingly.” 5 McQuillin Mun. Corp. § 16:75 (3d ed. 2020).

Publication also provides a means for litigants to more easily introduce and prove legislative enactments in court. *Leland v. Wilkinson*, 31 U.S. 317, 322 (1832) (stating that the “public laws” of a state may be read in court, but “private laws, and special proceedings . . . are governed by a different rule. They are matters of fact, to be proved as such”). *See also, e.g., San Diego Charter § 20* (stating codified ordinances “shall be admissible in all courts as prima facie evidence of the due passage and publication of the ordinances as codified.”). And publication “operates to avoid hasty or ill-considered action.” 5 McQuillin Mun. Corp. § 16:75

⁶ Voters were told that Measure H would remove the designation of an official City newspaper to be used to meet publishing requirements. Prior to its repeal in 2016, Charter section 113 required the City’s Purchasing Agent to conduct a competitive bidding process once every two years, to select the City’s “Official Newspaper” for publishing the City’s legally required notices. *See Voter Pamph., Meas. H, Pres. Gen. Elec. (Nov. 8, 2016)* at https://www.sandiego.gov/sites/default/files/voterpamphlet110816_2.pdf (for background).

(3d ed. 2020). “[A]ction by ordinance is a reflective process that affords an opportunity for expression of opinion; this manifestly is the rationale of statutory requirements of publication or notice of pendency or ordinances.” *Id.*

However, neither the Charter nor the Municipal Code requires post-enactment publication of specified information about ordinances and resolutions as a pre-condition for the Council’s legislative acts to take effect. The Charter’s publication requirements have been reviewed by California courts in two cases and determined to be “merely directory” and not a legal requirement to complete the legislative enactment. *Hollander v. Denton*, 69 Cal. App. 2d 348, 351 (1945).

In the *Hollander* case, a property owner in the City sued the developer of neighboring property for damages caused by the defendant’s lowering of the curb and street grade. *Id.* at 349. The developer defended the modifications on the basis that the street grade and the developer’s plans were approved by the Council by ordinance and related resolutions. *Id.* at 350. However, the plaintiff property owner argued that the ordinance establishing the street grade was not properly published in accordance with Charter sections 18 and 20, and, therefore, was invalid. *Id.* at 351.

The court of appeal rejected the property owner’s challenge to the Council’s actions, concluding that the publication requirement is “merely directory” and publication was not legally required. *Id.* The court did not analyze whether the ordinance establishing the street grade was “of a general nature.” But the court concluded that the Charter did not require publication of the legislative enactments for them to take effect:

The ordinance and resolutions were therefore, on their face, valid without publication. The burden of proof of want of publication under the circumstances here related, rested upon the one who denied the validity of the ordinance. It has been repeatedly held by the courts of this state, that the publication of an ordinance or resolutions of the character here involved, is not a prerequisite to their taking effect unless the provisions of the charter or some other applicable law definitely makes such publication a prerequisite to their effectiveness.

Id. at 352 (citations omitted).

Similarly, the appellate court rejected a criminal defendant’s appeal of his conviction for failure to secure a City license required of independent contractors on the basis that the ordinance requiring the license was not published in a book form every two years, in accordance with Charter section 20. *People v. Crittenden*, 93 Cal. App. 2d Supp. 871, 876-77 (Cal. App. Dep’t Super. Ct. 1949). The appellate court concluded that “an ordinance enacted with all the formalities required by law does not cease to be an ordinance by the mere fact that the city council may fail at some future date to perform an official duty.” *Id.* at 876. The California Supreme Court has also held that publication requirements are ministerial in nature, intended to

give people notice of the legislative act, but not required for the legislative act to take effect. *City of Sacramento v. Dillman*, 102 Cal. 107, 111 (1894). Therefore, if the City fails to properly publish an ordinance or resolution after its adoption, that should not serve to invalidate the Council's approval of the ordinance or resolution.

III. PUBLICATION REQUIREMENTS APPLY WHEN THE COUNCIL'S LEGISLATIVE ENACTMENT COVERS ALL PERSONS OR MATTERS WITHIN THE CITY OR A SIMILARLY SITUATED SUBSET.

Although the phrase "of a general nature" is used in both Charter sections 18 and 20, it is not defined in either. Charter section 20 does state that "[t]he Council may by ordinance codify all of the ordinances of a general nature of the City into a Municipal Code." San Diego Charter § 20. The Council has adopted ordinances, codified in the Municipal Code, as set forth in Municipal Code section 11.0101. Therefore, it is our view that any ordinance, adding to, amending, or repealing codified ordinances must be published. But, to determine what other legislative enactments are covered by the publication requirements of Charter section 18, we must apply rules of interpretation.

In interpreting Charter language, a reviewing court's task is to determine the intent of the voters in approving the language. *Don't Cell Our Parks v. City of San Diego*, 21 Cal. App. 5th 338, 349 (2018). *See also Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988). A reviewing court will "look first to the language of the charter, giving effect to its plain meaning." *Don't Cell Our Parks*, 21 Cal. App. 5th at 349. If the language is clear and unambiguous, the court will apply its plain meaning. *Id.* *See also Domar Elec., Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 172 (1994); *Local 21, International Fed'n of Prof'l & Tech. Eng'rs, AFL-CIO v. City of San Francisco*, 76 Cal. App. 4th 213, 224-25 (1999). A reviewing court must also read Charter provisions together, to give effect to each provision. As the court of appeal explains:

[T]his plain meaning rule does not prohibit a court from determining whether the literal meaning of a charter provision comports with its purpose, or whether construction of one charter provision is consistent with the charter's other provisions. Literal construction should not prevail if it is contrary to the voters' intent apparent in the provision. . . . Provisions relating to the same subject matter must be harmonized to the extent possible. When statutory language is susceptible of more than one reasonable interpretation, courts should consider a variety of extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history including ballot pamphlets, public policy, contemporaneous administrative construction and the overall statutory scheme.

Id. at 224-25 (citations omitted). *See also San Diegans for Open Gov't v. City of San Diego*, 31 Cal. App. 5th 349, 376 (2018); *Professional Eng'rs in California Gov't v. Kempton*, 40 Cal. 4th 1016, 1037 (2007) (stating where there is ambiguity in the language of the measure, "[b]allot summaries and arguments may be considered when determining the voters' intent and understanding of a ballot measure" (quoting *Legislature v. Deukmejian*, 34 Cal. 3d 658, 673,

fn. 14 (1983)). Without express definitions in the Charter, we can look to other sources.⁷ A law “of a general nature” is generally defined as one that “relates to a subject of broad nature.” *Law (General Law)*, *Black’s Law Dictionary* 1057 (11th ed. 2019). It is not “confined in application to particular persons.” *Id.* Rather, a “general law” is one that “purports to apply to all persons or places of a specified class throughout the jurisdiction.” *Id.*

The phrase “of a general nature,” is found in the California Constitution provisions on equal protection, specifically stating that “[a]ll laws of a general nature have uniform operation.” Cal. Const., art. IV, § 16(a). One appellate court summarized the long-standing California rule on “general” laws, as follows:

It is universally held in California that a law is general if it has a uniform operation and affords equal protection in its operation to all persons coming within the class which it purports to affect provided the designation of such class is founded on some reasonable, natural or intrinsic classification between the persons composing it and others not embraced within it.

Higbie v. Los Angeles Cty., 47 Cal. App. 2d 281, 289 (1941).⁸ The California Supreme Court has said: “[L]aws ‘of a general nature’ shall be ‘uniform in their operation’--that is, that such laws shall bear equally, in their burdens and benefits, upon persons standing in the same category.” *People ex rel. Smith v. Judge of Twelfth Dist.*, 17 Cal. 547, 554 (1861). More recently, the California Supreme Court explained that a law is “general in its scope . . . if it relates to and acts uniformly upon the whole of any single class of individuals or objects, and the classification is founded upon some natural, intrinsic, or constitutional distinction.” *Keenan v. San Francisco Unified Sch. Dist.*, 34 Cal. 2d 708, 713 (1950). A leading treatise on municipal corporations summarizes the definition of general laws, as follows:

A statute which relates to persons or things as a class is a general law, while a statute which relates to particular persons or things of a class is special. A legislative act that applies to and embraces all persons, who are or may come into similar situations and circumstances is a general law. A law is general when its provisions apply to all objects of legislation, distinguished alike by

⁷ Generally, the manner and mode of enacting a municipal ordinance is a municipal affair, governed by local law. *Adler v. City Council*, 184 Cal. App. 2d 763, 768, fn.1 (1960); *Brougher v. Board. of Pub. Works*, 205 Cal. 426, 438-39 (1928). However, we can look to general principles under California law for guidance.

⁸ See also, e.g., *City of Malibu v. California Coastal Com.*, 121 Cal. App. 4th 989, 993 (2004) (“‘general’ legislation . . . applies uniformly to all members of a class”); *Heitz v. County of Sacramento*, 87 Cal. App. 3d 754, 758 (1978) (“It is well settled that “ ‘(a) law, to be general in its scope . . . need not include all classes of individuals in the state. It answers the constitutional requirements [of article IV section 16 of the California Constitution] if it relates to and acts uniformly upon the whole of any single class of individuals or objects, and the classification is founded upon some natural, intrinsic or constitutional distinction.”); *People v. Clark*, 241 Cal. App. 2d 775, 778 (1966) (stating a law is general “if its terms apply to, and its provisions operate upon, all persons and subject-matters in like situation”); *Carr v. Kingsbury*, 111 Cal. App. 165, 172 (1931) (“an act is considered general in its effect if it applies to all . . . persons within a well-defined class”); *Martin v. Superior Ct.*, 194 Cal. 93, 100 (1924) (“It is a general law having a uniform operation upon a class of persons or things readily and naturally differentiated from another class of persons or things by reason of the necessities peculiar to the subject matter of the legislation.”).

qualities and attributes that necessitate the legislation, or to which the enactment has manifest relation. The law must embrace all and exclude none whose conditions and wants render the legislation equally necessary or appropriate to them as a class. . . . [I]t is a generally accepted principle that an act does not have to apply to every place, circumstance, or thing to be a “general” law. . . . A law is of a general nature only where it affects the whole of a class of persons or things.

2 McQuillin Mun. Corp. § 4:43 (3d ed. 2020) (footnotes omitted)

A general law is distinct from a “special law,” which “pertains to and affects a particular case, person, place or thing, as opposed to the general public.” *Law (Special Law)*, *Black’s Law Dictionary* 1057 (11th ed. 2019). A “special” legislative act is “limited in its operation to, and spending its force upon, a given case, and a particular state of facts. It is effectual only for that case, and applies only to those facts.” *People ex rel. Smith*, 17 Cal. at 552. Therefore, publication is required when the legislative enactment applies uniformly to all or a similarly situated group.

The ballot summaries and arguments covering Charter section 18, including its amendments, show that its purpose is to provide notice to the public of the Council’s legislative enactments. Section 18, in the City’s 1931 Charter, provided, in pertinent part: “Within ten days after final passage each ordinance or resolution of a general nature shall be published at least once in such manner as may be provided by this Charter or by ordinance.”

This interpretation is consistent with documented City voter intent. In 1974, City voters approved an amendment to Charter section 18, to increase the time to publish ordinances and resolutions of a general nature, from ten to fifteen days after final passage, but the intent to provide notice remained the same. *See Voter Pamph.*, Prop. G, Special Municipal Elec. (Nov. 5, 1974), at 2.⁹ City Clerk Edward Nielsen authored the argument in favor of Proposition G, stating that the additional noticing time would reduce overtime payments to the staff of the City Clerk’s office. *Id.* The opponents of the measure argued: “Section 18 of the City Charter dates to the original document approved by voters in 1931 to clean up corrupt municipal politics. It is there to assure that city government cannot hide passage of new statutes. The entire law must be printed for all to see.” *Id.* (underline omitted).

City voters amended Section 18 again in November 1978, with voter approval of Proposition H, which set forth the current language. The Charter limits the publication requirement to the title and number of each ordinance or resolution of a general nature and a digest, which is a brief synopsis of the matter. The stated purpose of Proposition H was to save printing costs, by requiring the publication of just the title, number, and digest or summary of ordinances and resolutions of a general nature, rather than the entire text of the legislative act. Ballot Materials, Proposition H, November 7, 1978 Election.¹⁰ The proponents explained that complete copies of ordinances and resolutions will be available to the public at the office of the City Clerk. *Id.*

⁹ See <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/pdf/pamphlet741105.pdf>.

¹⁰ See <https://www.sandiego.gov/sites/default/files/legacy/city-clerk/pdf/pamphlet781107.pdf>.

Based on these authorities, we interpret legislative enactments “of a general nature,” as described in Charter sections 18 and 20, to include those City ordinances, adopted by the Council, that are intended to uniformly apply to and operate upon all individuals or matters, or a properly defined, similarly situated class or category of individuals or matters. These include all ordinances codified in the Municipal Code, which, at section 12.0201 states, in part: “It shall be unlawful for any person to violate any provision or to fail to comply with any of the requirements of this Code.” SDMC § 12.0201. For example, the Council has adopted and codified an ordinance that makes it unlawful to drink alcohol on public property, as set forth in Municipal Code section 56.54(b), which applies to all persons within the City.

The Council also regularly adopts ordinances that are not codified in the Municipal Code. Ordinances adopting “an election code” and “calling or relating to elections” (Charter sections 8, 275) apply to voters citywide. The Council also annually adopts the Salary Ordinance setting compensation schedules for City employees (Charter sections 11.1, 70, 290); the Annual Appropriation Ordinance, which sets forth “the legal levels at which the Chief Financial Officer, as the designee of the Mayor, shall control operational and capital project spending” (Charter section 69)¹¹; and the annual tax levy (Charter section 75). These ordinances relate to the collection or expenditure of taxpayer funds citywide, and, therefore, are more properly designated as being “of a general nature,” under California law.

There are certain ordinances relating to the expenditure of City funds that do not regulate the conduct of all people or matters, or a similarly situated class of people or matters. For example, the Council’s adoption of an ordinance, as required by Charter section 99, approving a City contract that will extend “for a period of more than five years” impacts the City’s long-term financial obligations and individual contractors, but it arguably does not limit or restrict the conduct of citizens or apply uniformly to a specified group or class. Therefore, it could be argued that these Council enactments are not “of a general nature,” falling under Charter section 18. Further, the Council has not directed publication.

¹¹ There is no longer an express Charter requirement to publish the Annual Appropriation Ordinance. There was language in former Charter section 71, requiring publication of the Annual Appropriation Ordinance. But this provision was amended by City voters with the adoption of Proposition E on June 7, 2016. Voter Pamph., Prop. E, Pres. Primary Election (June 7, 2016), at p. N SD 087-095. *See* https://www.sandiego.gov/sites/default/files/voterpamphlet060716_2.pdf. Therefore, the legal advice we provided in memoranda, dated 2007 City Att’y MS 501 (2007-19; Jul. 27, 2007) and 2009 City Att’y MS 753 (2009-4; Mar. 16, 2009), related to publication of the Annual Appropriation Ordinance, is now outdated.

Historically, information about Council ordinances and resolutions involving City elections and Council adoption of the annual Salary Ordinance and Appropriation Ordinance has been published. We recommend that the Council confirm, by ordinance, the publication requirements for these ordinances. This clarifying ordinance may also include direction to the City Clerk on the location of the publication, given that the Charter provision on the City's official newspaper has been repealed.¹²

This clarifying ordinance may also provide guidance on whether legislative acts approving land use plans and regulations fall under Charter section 18. The City's Land Development Code is adopted by ordinance and codified in the Municipal Code at chapters 11 through 15. *See, e.g.*, SDMC § 111.0101. It is our view that the publication requirements of Charter section 18 apply to these ordinances, but this should be made clear through a codified ordinance amending the Land Development Code.

Zoning or rezoning decisions to implement a specific plan must also be adopted by ordinance. SDMC § 122.0107(c). However, these ordinances are not required to be codified, and it is unclear whether they would be considered "of a general nature." Again, the Council may, by ordinance, resolve this question and provide direction to the City Clerk related to publication.

IV. RESOLUTIONS GENERALLY DO NOT NEED TO BE PUBLISHED.

Resolutions are distinct from ordinances. The Charter establishes different procedural rules for the adoption of ordinances and resolutions.¹³ As a general rule, the Council may act by resolution, unless it must act by ordinance based on an express requirement in the Charter or other applicable law. *See, e.g.*, San Diego Charter §§ 275, 280, 295. But a resolution of a legislative body is not the "legal equivalent" of an ordinance. *Pinewood Inv'rs v. City of Oxnard*, 33 Cal. App. 3d 1030, 1039 (1982). The difference between the two is one of formality and enforcement. *See* Cal. Muni. Law Hdbk. § 1.230 (2019).

¹² In a summary of case law from across the country, the following types of ordinances have required publication after enactment: ordinances of "a general and permanent nature, that is, those constituting municipal legislative acts," police ordinances, ordinances providing penalties and forfeitures, penal ordinances, ordinances relating to a loan to a city, appropriation ordinances or those involving the expenditure of public money, ordinances dedicating streets, ordinances involving charter amendments, ordinances adopting a uniform traffic code, ordinances affecting the property rights of citizens, and ordinances regulating public utilities. 5 McQuillin Mun. Corp. §16.76 (3d ed. 2020). *See also Id.* at § 16.75. Ordinances that "are purely administrative or ministerial in character" and those "not penal in character" have not required publication. *Id.* at § 16.76.

¹³ Generally, resolutions are effective immediately upon their final passage, unless stated differently within the resolution. San Diego Charter § 295(c). However, most ordinances do not take effect until thirty calendar days from the date of their final passage. San Diego Charter § 295(d). The Mayor has veto authority over all resolutions and ordinances of the Council, with limited exceptions set forth at Charter section 280. The Mayor's veto power does not extend to matters that are exclusively within the purview of the Council, including the selection of the Independent Budget Analyst and a presiding officer, and the establishment of rules or policies of governance of the Council that do not affect the administrative service of the City under the control of the Mayor. San Diego Charter § 280(a)(1). The Mayor's veto power also does not extend to matters where the Council must act as a quasi-judicial body over a legally-required public hearing, emergency ordinances, the Annual Appropriation Ordinance, and the appointment of the Audit Committee and City Auditor. San Diego Charter § 280(a).

An ordinance is a local law adopted with the legal formality of a statute. *City of Sausalito v. County of Marin*, 12 Cal. App. 3d 550, 565 (1970). “It prescribes a rule of conduct prospective in operation, applicable generally to persons and things subject to the jurisdiction of the city.” *Central Mfg. Dist., Inc. v. Board of Sup'rs of Los Angeles Cnty.*, 176 Cal. App. 2d 850, 860 (1960). Ordinances are enforceable. See San Diego Charter § 265(b)(2) (authorizing the Mayor to “execute and enforce all laws, ordinances, and policies of the City). See also *Monterey Club v. Superior Court*, 48 Cal. App. 2d 131, 147 (1941) (“Any ordinance passed by a municipal corporation within the scope of the authority conferred on it has the same force within its corporate limits as a statute passed by the legislature has throughout the state.”).

A resolution is a legislative enactment that “denotes something less formal. It is the mere expression of the opinion of the legislative body concerning some administrative matter for the disposition of which it provides. Ordinarily [a resolution] is of a temporary character, while an ordinance prescribes a permanent rule of conduct or of government.” *Central Mfg. Dist., Inc.*, 176 Cal. App. 2d at 860 (quotation marks and citation omitted). See also *City of Sausalito v. County of Marin*, 12 Cal. App. 3d 550, 565 (1970) (stating that unlike ordinances, resolutions do not have the force of law, but are merely expressions of opinion or evidence of a decision made by the body, often related to the administrative business of a municipality).

While Charter section 18 includes resolutions in its language, resolutions are typically not “of a general nature,” as defined in the California cases discussed above. Often a resolution memorializes the Council’s intent to approve a transaction, such as a contract of a short duration,¹⁴ a collective bargaining agreement, or a Council policy. There may be some exceptions, such as resolutions related to City elections matter and resolutions to establish fees.

As we explained above related to ordinances, we recommend that the Council adopt an ordinance, consistent with Charter section 18, setting forth the types of resolutions that are covered by the publication requirements, and the method or place of publication of information about them. In the alternative, the Council may consider presenting to City voters a proposed amendment to Charter section 18, removing the publication requirement for resolutions.

CONCLUSION

Charter section 18 requires publication of the title, number, and a digest or summary of ordinances and resolutions “of a general nature,” at least once, within fifteen days of final passage. The manner of publication is determined either by another specific provision of the Charter, if any, or by ordinance of the Council. The Council has adopted an ordinance, codified at Municipal Code section 22.0102, requiring publication in the City’s official newspaper of ordinances and resolutions “of a general nature.” But this Municipal Code section does not define the phrase “of a general nature,” making direction to the City Clerk on publication unclear. In addition, the City’s official newspaper is no longer defined because, as part of an amendment related to the City’s contracting processes, City voters recently repealed the Charter provision that defined the City’s newspaper.

¹⁴ Contracts, agreements, or obligations “extending for a period of more than five years” must be adopted by ordinance approved by a two-thirds’ majority vote of the Councilmembers. San Diego Charter § 99.

To remedy the ambiguity of the publication requirements, the Council may, by ordinance, define the phrase “of a general nature.” The Council may rely on general definitions found in California case law. A clarifying ordinance should also specify the details of publication. Those legislative acts that are “of general nature” should include ordinances, adding to, amending, or repealing provisions in the Municipal Code, as well as uncodified ordinances and resolutions covering the City’s annual budget process (Salary Ordinance and Appropriation Ordinance), City elections, adoption of City fees, and general land use matters that affect an entire community plan or community-wide area.

This Office is available to assist further if the City Clerk wishes to proceed with recommending to the Council a clarifying ordinance that is consistent with Charter sections 18 and 20.

MARA W. ELLIOTT, CITY ATTORNEY

By */s/ Joan F. Dawson*
Joan F. Dawson
Senior Deputy City Attorney

JFD:jvg:cm
ML-2020-3
Doc. No. 2535193
cc: Honorable Mayor and Councilmembers